

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

11-0605R

RESOLUTION AUTHORIZING LEASE AGREEMENT WITH A & L PARTNERSHIP LLP FOR LEASE OF WORKFORCE CENTER SPACE IN THE DULUTH ATHLETIC CLUB BUILDING IN THE AMOUNT OF \$357,650 PER YEAR.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into a lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____ with A & L Partnership LLP for the leasing of approximately 23,000 square feet of space in the Duluth Athletic Club building at 402 West First Street in Duluth, Minnesota for an amount estimated not to exceed \$357,650 per year, payable from the Fund 268-031-6251-5412 (Workforce Development Fund, Grants Division, Office Support, Building Rental).

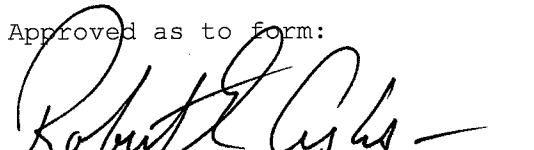
Approved:


Department Director

Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

WFD/ATTY REA:dma 11/04/2011

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a lease with A & L Partnership LLP to lease substantially all of the old Duluth Athletic Club Building across First Street from City Hall for the purpose of establishing a Workforce Center to be occupied by the City's Workforce Development Division along with workforce development operations of the State Department of Employment and Economic Development, the Northeast Minnesota Office of Job Training and

Arrowhead Economic Opportunity Agency. This will replace space presently occupied in the Government Services Center which the County is requiring the parties to vacate and will also allow consolidation of the City's Workforce Development Division operations into a single, cohesive unit.

Under the agreement the City will serve as the prime lessee of substantially the entire building and will then lease portions of the building out to the partners in the Center at the City's cost so that the city will end up paying only for its proportionate use of the space and facilities. A & L has agreed that, if the needs of any of the partners change as a result of changes in the scope of services or changes in a partner's funding, the lease can be adjusted to meet the new circumstances, including rent reductions were appropriate.

Barring unforeseen circumstances the lease will run for a period of 10 years.

**LEASE AGREEMENT
CITY OF DULUTH
A & L PARTNERSHIP, LLP
DULUTH WORKFORCE CENTER**

THIS AGREEMENT is entered into this ____ day of October, 2011, and is made by and between the CITY OF DULUTH, a municipal corporation created and existing under State of Minnesota, hereinafter referred to as "City", and A & L PARTNERSHIP, LLP, a limited liability partnership created and existing under the Laws of the State of Minnesota, hereinafter referred to as "Lessor".

WHEREAS, Lessor is the owner of the hereinafter-defined Property and Building known as the Duluth Athletic Club Building located at 402 West First Street in Duluth, Minnesota; and

WHEREAS, City, along with the hereinafter defined Agencies, are providers of various kinds of work assistance services in the Duluth-Superior area; and

WHEREAS, City and Agencies are desirous of creating a "Workforce Center" wherein City and Agencies can better offer their combined services to their clientele in more coordinated and comprehensive manner from a single location; and

WHEREAS, City is desirous of leasing approximately 23,000 square feet of space in the hereinafter-defined Building and of subleasing portions of it to the Agencies for the purpose of establishing and operating such a Workforce Center; and

WHEREAS, Lessor is desirous of leasing such space to City under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties covenant and agree for themselves and their successors and assigns as follows:

**ARTICLE I
DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Agencies: shall mean various public and private entities providing workforce services to persons in the Duluth Superior Area with which the City may enter into sublease agreements for use of a portion of the Leased Premises.
- B. Base Rent: shall mean the monthly rate per square foot payable by City to Lessor for the use of Leased Premises as set forth in Paragraph A of Article

III. below. The Rent shall be inclusive of all costs and charges of any kind whatsoever arising out of City's use and occupancy of the Leased Premises including but not limited to all costs to Lessor of maintaining the Building including any areas commonly deemed to be "common areas", including but not limited to the costs of routine maintenance, utilities, elevator maintenance, snow removal and disposition, real estate taxes, insurance, security, on-site management and accounting services, garbage removal and other routine costs of operating facilities such as the Building. Provided however, that Base Rent shall not include the cost of Cleaning Services.

- C. Building: shall mean the building located on the Property.
- D. City: shall mean the City of Duluth, Minnesota.
- E. Cleaning Charges: shall mean the amount paid to Lessor by City for the provision of Cleaning Services determined as set forth in Paragraph B of Article III below.
- F. Cleaning Services: shall mean the performing routine cleaning of the Leased Premises including but not limited to vacuuming, sweeping, mopping, washing, polishing of flooring surfaces, window washing, cleaning of wall and ceiling surfaces, picking up of trash and debris and emptying of waste receptacles in and over the entirety of the Leased Premises.
- G. Director: shall mean Director of the Department of Business and Community Development or the person designated to act on behalf of him/her with regard to this Agreement.
- H. Leased Premises: shall mean those portions of the UA located on the first floor level, second floor level and third floor level of the Building as shown on Exhibit A attached hereto and made a part hereof leased to City for its use as provided for herein and as the Leased Premises may be, from time to time, modified as provided for in Paragraph C. of Article II of this Agreement. As of the date of this Agreement, the UA of the Leased Premises is estimated to be Twenty-three Thousand square feet (23,000 Sq.Ft.); provided that the actual square footage and location of the Leased Premises, as shown on Exhibit A, as of the first date of occupancy thereof shall be approved and memorialized in writing by the Director and, if necessary, new versions of Exhibit A shall be substituted for those attached hereto at the time of signing of this Agreement.
- I. Property: shall mean that property located in St. Louis County, Minnesota legally described as:

Lot 65, West Superior Street, DULUTH PROPER First Division.

- J. Rent: shall mean the Base Rent and Cleaning Charges.
- K. Subtenants: shall mean subtenants of City to which City subleases all or any portion of the Leased Premises under such terms and conditions as City shall deem appropriate.
- L. Term: shall mean the term as stated in Article IV. below.
- M. Tenant Improvements: shall mean floor coverings, wall surface treatments within the Leased Premises, partitions, doors, light fixtures and wiring within the Leased Premises, other electrical wiring, telephone wiring and cable systems to serve needs of the City and Subtenants, ceilings within the Leased Premises and any other improvements within the Leased Premises to meet the needs of City as a tenant and any Subtenants of City.
- N. Usable Area (the "UA"): shall mean that portion of each floor of Building included in the Leased Premise computed by measuring from the finished surface of the leased side of any corridor and other permanent walls, and the dominant portion and/or a major vertical penetration and the center of partitions that separate the Leased Premises from adjoining space; no deductions shall be made for columns and projections necessary to the Building

ARTICLE II LEASED PREMISES

- A. Lease of Leased Premises
Subject to the terms and conditions hereinafter set forth, Lessor hereby grants and leases to City the Leased Premises, for the exclusive use of City and its Subtenants, if any. During the Term and any extensions, City shall have exclusive use of the Leased Premises for the purposes herein set forth, subject to the terms and conditions of this Agreement and, unless authorized by this Agreement, Lessor will take no action which will prevent City from the quiet enjoyment of the Leased Premises during saidthe Term.
- B. Common Areas
In addition to City's exclusive rights to the Leased Premises, City and its Subtenants, if any, shall enjoy, in common with Lessor and its other tenants if any, full and complete use of the common areas in the Building, including but not limited to entryways, hallways, courts, stairways, elevators, escalators, if any, bathroom facilities and any other areas of the Building of a type or character commonly available as common area to tenants of

commercial buildings. Lessor shall have the right, from time to time, to make, enforce and modify reasonable rules for the use of the common areas by all tenants of the Building, including City and its Subtenants, provided that such rules do not unreasonably interfere with the reasonable use of or occupancy of the Leased Premises by City and its Subtenants.

C. Changes to the Leased Premises

During the Term of the Agreement, upon Thirty (30) days prior notice to Lessor as provided for in Article XX. below, Director shall have the right to delete from the Leased Premises any portion thereof which the City deems to be superfluous to its needs. City agrees that the portion of the Leased Premises so deleted will, to the extent reasonably practical, constitute a space which is reasonably rentable to a third party tenant and that such deleted portion shall have direct access to one or more of the common areas of the Building in a manner which will provide reasonable ingress and egress to and from the deleted portion in a commercially reasonable manner and reasonable access to restroom facilities that will serve male and female employees. Both the deleted portion of the Leased Premises and the remainder of the Leased Premises shall be provided with code-compliant egress from the Building. City further agrees that upon the vacation of the such deleted portion of the Leased Premises, City and its Subtenants shall have removed therefrom all personal property of City and any Subtenants which have not become part of the realty and will have removed all trash and any other unwanted materials from the deleted portion of the Leased Premises. Upon such deletion of any such portion of the Leased Premises, City shall provide to Lessor a revised drawing of the floorplan of the floor or floors of Building upon which the deleted portion of the Leased Premises is located in a form substantially similar to Exhibit A, which shall thereafter be substituted in Exhibit A for the floorplans which have been superceded and the rights and responsibilities of the parties with regard to the Leased Premises shall exclude such deleted portion except as provided for in Paragraph D below.

D. Re-lease of Deleted Leased Premises

In the event that the Director shall have previously deleted any portion of the Leased Premises as provided for in Paragraph C above and shall later determine that it is to City's benefit to add said portion or any part thereof back into the Leased Premises under the terms of this Agreement and if said

portion of the Leased Premises are not then leased or committed to a third party, Lessor agrees that on a date agreed to in writing between Lessor and Director, said portion shall effectively be added back into the definition of Leased Premises, City shall provide to Lessor a revised drawing of the floorplan of the floor or floors of Building upon which the added portion of the Leased Premises is located in a form substantially similar to Exhibit A, which shall thereafter be substituted in Exhibit A for the floorplans which have been superceded and thereafter, subject to later deletion pursuant to Paragraph C above, said portion shall be covered by the terms and conditions of this Agreement.

ARTICLE III LEASE PAYMENTS

A. Base Rent

During the Term of the lease, it is agreed that City will pay Lessor Base Rent for the use of the Leased Premises on a monthly basis, which rent shall equal One/Twelfth (1/12) on the following rental rate applicable to that month multiplied by the number of square feet of the UA to be actually occupied by City during that month. Said rental payments shall be payable on the first day of the month to which they are attributable.

| | | |
|-----|--------------------------------|--------------------------|
| 1. | From Effective date to 7/31/12 | \$11.00/square foot/year |
| 2. | From 8/01/12-7/31/13 | \$12.90/square foot/year |
| 3. | From 8/1/13-7/31/14 | \$12.90/square foot/year |
| 4. | From 8/1/14-7/31/15 | \$12.90/square foot/year |
| 5. | From 8/1/15-7/31/16 | \$13.15/square foot/year |
| 6. | From 8/1/16-7/31/17 | \$13.40/square foot/year |
| 7. | From 8/1/17-7/31/18 | \$14.05/square foot/year |
| 8. | From 8/1/18-7/31/19 | \$14.05/square foot/year |
| 9. | From 8/1/19-7/31/20 | \$14.05/square foot/year |
| 10. | From 8/1/20-7/31/21 | \$14.35/square foot/year |
| 11. | From 8/1/21-7/31/22 | \$14.70/square foot/year |

B. Cleaning Charges

Lessor agrees that, at the request of City, Lessor will provide Cleaning Services to the Leased Premises at the rate of \$0.85 per Square Foot per year or in the alternative, City shall have the option of providing Cleaning Services to the Leased Premises in another manner. If City requests Lessor

to provide Cleaning Services, Cleaning Charges shall be payable on a monthly basis along with the Base Rent, shall equal \$0.85/12 multiplied by the number of square feet of the UA to be actually occupied by City during that month and the cost thereof shall be included in the definition of Rent. If City requests Lessor to provide Cleaning Services, said request shall be effective unless and until City gives Lessor Thirty (30) days prior notice of discontinuance of such request as provided for in Article XX. below or unless Lessor is in breach of its obligations with regard thereto. If City terminates such request for reasons other than such breach, said termination shall be effective at the end of the month following the month in which City gives Lessor such notice of termination. If City, after having terminated Lessor's provision of Cleaning Services, wishes to have Lessor resume provision of Cleaning Services to the Leased Premises, Lessor agrees to do so, which resumption of the provision of Cleaning Services shall commence following the end of the month following the month in which City Gives Lessor notice of its request to resume providing Cleaning Services to the Leased Premises. If such termination results from a breach of the Lessor's obligations to provide Cleaning Services, the provisions of Article XII. shall be controlling.

ARTICLE IV

TERM

The Term of this Agreement shall be deemed to have commenced as of the date upon which the City Clerk attests to its execution as shown on the signature page of this Agreement and shall run through July 31, 2022 unless extended or sooner terminated as hereinafter provided for.

ARTICLE V

OPERATING COVENANTS

Lessor covenants and agrees that in its operations and use of the Building it will:

A. Maintenance

At all times, except as set forth in this Paragraph, cause the Building to be operated and maintained in a neat, orderly condition; to maintain and preserve and keep in good repair, working order and condition said Building; and to perform all needful and proper repairs, renewals and replacements necessary to be made thereto, including the provision of Cleaning Services to the Leased Premises if requested by City; provided, however, unless City requests Lessor to provide Cleaning Services to the Leased Premises and

pays Lessor therefore as provided for in Paragraph B of Article II above, City shall be responsible for providing and paying for Cleaning Services for the Leased Premises. The obligation to maintain the Building shall include but not be limited to maintenance of all foundations, external walls, doors, windows, utility openings all roofing systems and all mechanical, electrical, HVAC, electronic keycard access systems and other Building Systems. Lessor shall also be responsible for maintenance of the Property outside of the Building, including snow removal and landscape maintenance and all other exterior maintenance to said Property.

B. Utilities

Pay any and all charges for utilities furnished to the Building including but not limited to hook-up charges and assessments related to all utilities, including but not limited to electrical service, fibre optic cable of a size and speed acceptable to City, steam, water, sewer and gas. City shall be responsible for paying for all costs associated with the provision of any other utilities not specified herein to the Leased Premises and, if desired, the cost of cable TV service.

C. Heating and Cooling

The temperature in the Leased Premises shall be maintained between 68 Degrees Fahrenheit and 78 Degrees Fahrenheit at all times.

D. Licenses and Permits

Preserve Lessor's existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs and to be qualified to do business; provided, however, that nothing herein contained shall be construed to obligate it to retain or preserve any of its licenses, permits or consents which are no longer useable.

E. Obey All Laws

Conduct its affairs and carry on its business and operations in such a manner as to comply with any and all applicable laws of the United States and the several states thereof and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Property; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested by Lessor in good faith through proper legal action provided that such protest shall in no way affect Lessor's title to the Building.

F. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against the Building or the property upon which it is located.

G. Assessment Fees and Charges

To pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Building or the property upon which it is located, or any part there and to pay all fees, charges and rentals for utilities, service or extensions for the Building and all other charges lawfully made by any governmental body for public improvements.

H. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against as and when the same becomes due and payable other than any thereof whose validity, amount or collectability is being contested in good faith by appropriate proceedings.

I. Refuse and Garbage

If City chooses to have Lessor provide Cleaning Services to the Leased Premises, Lessor shall be responsible to collect all trash, refuse and garbage of any kind on the Leased Premises or on the Property and to dispose of the same at its sole cost. If City chooses not to have Lessor provide Cleaning Services to the Leased Premises, City shall be responsible for collecting and removing all trash and refuse from the Leased Premises and for having it deposited to a common collection point on each floor of the Leased Premises at its cost. Thereafter Lessor shall have all responsibility for the disposal of refuse and garbage generated by its operations at the Building and agrees to absorb all costs related thereto.

J. Other Costs of Operating and Maintaining Building

In addition to the foregoing costs and charges set forth above, Lessor shall bear, and promptly pay, on or before the date due, all other costs, fees and charges of any kind whatsoever, arising out of the ownership of or use of or occupancy of the Building.

ARTICLE VI

TENANT IMPROVEMENTS

Prior to the commencement of any Tenant Improvements on the Leased Premises, City

shall have provided to Lessor the following information and documentation with regard to any such Work:

A. Initial Improvements

Lessor and City agree that by a date agreed to by the parties, Lessor shall have completed the Tenant Improvements shown on Exhibit B attached hereto and made a part hereof at no cost to City. Such Tenant Improvements shall be deemed to be part of the realty.

B. Subsequent Tenant Improvements

City shall have the right to make additional Tenant Improvements to the Leased Premises, provided that if such Tenant Improvements shall have a cost for construction and materials in excess of Ten Thousand Dollars (\$10,000), such Tenant Improvements shall be done in accordance with the process set forth in this Subparagraph.

1. Construction Plans

In the event that City, either for itself or for any Subtenant, wishes to make any Tenant Improvements to the Leased Premises, City shall cause to have prepared and submitted to Lessor plans and specifications for such Tenant Improvements in such specificity and detail as will clearly show what Tenant Improvements are proposed to be made and what materials and equipment are proposed to be included in such Tenant Improvements. All such plans, specifications and elevations shall be in conformity with this Agreement and with all applicable laws, ordinances, rules, regulations and requirements of the City, State and United States of America. Said plans and specifications may be disapproved by the Lessor but only if said plans and specifications do not meet applicable codes or if said Tenant Improvements will have a negative or deleterious physical effect on the Leased Premises or on the Building as a whole. If Lessor disapproves said plans and specifications pursuant to the authority contained in this Paragraph, City may either submit modified plans and specifications which meet Lessor's reasonable objections thereto or may abandon making the proposed Tenant Improvements.

2. Build-out of Tenant Improvements

At any time during the Term of the Agreement, City may present Lessor with plans for Tenant Improvements to the Leased Premises and request that Lessor purchase and install in, or build out such

improvements in, the Lease Premises. Within twenty (20) days of such request, Lessor shall furnish City with a detailed estimate of the cost of making such Tenant Improvements to the Leased Premises. If City approves Lessor's estimate of the costs thereof, City shall notify Lessor of its approval and thereafter Lessor shall proceed to promptly make said Tenant Improvements to the Leased Premises. City shall be responsible to reimburse Lessor for the cost of such tenant Improvements up to the amount of the cost estimate provided by Lessor. In the event that City determines that the cost of the Tenant Improvements proposed by Lessor exceeds the reasonable value thereof, City may secure, or have secured on its behalf, proposals to make said Tenant Improvements from third parties. If any such proposal is less in amount than that proposed by Lessor, Lessor shall be given notice thereof and the opportunity to reduce its estimated cost of making said Tenant Improvements. If said third-party proposal is less than Lessor's revised estimate, City shall be entitled to contract with said third party for the making of said Tenant Improvements.

3. Construction Contracts

If City contracts with a third party to construct the Tenant Improvements as authorized by Paragraph C above, City shall provide to Lessor a copy of an executed contract or contracts between Lessor and the contractor or contractors selected to complete the Tenant Improvements in accordance with approved plans and specifications, certified by City to be true and correct copies thereof.

ARTICLE VII

PREMISES AND MAINTENANCE

A. Premises

Lessor agrees to maintain the Building including the Leased Premises. If City requests Lessor provide Cleaning Services, in a clean, neat and orderly condition and in compliance with all codes for such facilities. Lessor shall maintain all elements of the Building, including the Leased Premises, in good, functional condition including heating systems, electrical systems, plumbing systems, drains, sewers, doors, and windows and shall repair or replace any such building systems or elements which become worn, damaged or broken.

B. Inspection of Leased Premises

Upon reasonable request therefore, City shall allow representatives of Lessor to inspect the Leased Premises.

C. Non-Discrimination

Lessor agrees to not engage in discriminatory practices in the completion in the operation or management of the Building with regard to either employment or service to the public, including specifically not discriminating on the grounds of race, creed, color, national origin, sex, age, handicap or receipt of public assistance, and Lessor shall, with respect to all activities on the Property, fully comply with all of the provisions of Federal, State and local law prohibiting discrimination against any protected class of persons.

ARTICLE VIII

SURRENDER OF POSSESSION

Upon the expiration or other termination of this Agreement, City's rights to use the Leased Premises herein granted shall cease and City shall, upon expiration or termination, promptly and in good condition surrender the same to Lessor. In the event that City has in any way changed, altered or modified the Leased Premises demised herein, other than those improvements permitted as herein provided for, City covenants to return the same to the condition they were in at the time of the signing of this Agreement or, in the alternative, to pay Lessor for the cost of returning them to said condition unless waived by the Lessor in writing. Upon termination, any Leasehold Improvements which have become part of the realty shall become the property of Lessor, and the same, together with the Leased Premises, shall be immediately returned to the control of Lessor. Any Leasehold Improvements not part of the realty shall be removed therefrom within fifteen (15) days after the termination of this Agreement or the same shall be deemed to have been abandoned to Lessor and the right of City to possession thereof shall cease.

ARTICLE IX

PROVISIONS REGARDING LIENS, ASSIGNMENTS AND SUBLEASES

A. Provision Against Liens

Except for encumbrances permitted pursuant to Paragraph B below, City shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Leased Premises or any part thereof, provided that if City shall first notify Lessor of its intention to do so, City may, in good faith, contest any such mechanics' or other liens filed or established as long as Lessor's interest or rights in this Agreement are subject to foreclosure by reason of

such context.

B. Provision Regarding Assignments, Transfers or Subleases

The parties hereto acknowledge that City anticipates subleasing the Leased Premises to one or more Subtenants and that such Subtenants may, in turn, further sublease the Leased Premises. Lessor specifically authorizes and agrees to such subleases but it is agreed between the parties that, regardless of the terms and conditions of any such sublease, City shall continue to be responsible for the fulfillment of all of its obligations under this Agreement during the entire Term hereof. Provided further that, nothing to the contrary of the foregoing withstanding, City shall have the right at any time to assign this Agreement to any Agency providing services similar in character to those provided by City and Agencies at the Work Force Center; in the event of such an assignment, such assignee shall be deemed to be the lessee for the purposes of this Agreement and shall stand in the position of City with regard thereto and, upon the making of such assignment, City shall have no further rights or responsibilities under this Agreement.

C. Subleasing of Leased Premises

It is specifically contemplated between the parties to this Agreement that City intends to sublease all or a portion of the Leased Premises to other Agencies for use in conjunction with the creation and operation of a joint Workforce Center. Any such sublease is hereby deemed to be approved. City, for itself and any Subtenant, agrees to give Lessor not less than ten (10) day's prior notice of its intent to sublease any portion of the Leased Premises to any other party.

D. Subordination of Agreement

Nothing to the contrary in this Article withstanding, this Agreement and all rights of City hereunder shall be subject and subordinate to the lien of any and all mortgages that may now or hereafter affect the Leased Premises, or any part thereof, and to any and all renewals, Modifications or extensions of any such mortgages, provided that such liens do not materially interfere with City's use of, occupancy of or enjoyment of the Leased Premises. City shall on reasonable written demand therefore from Lessor, execute, acknowledge and deliver to Lessor any and all instruments that may be reasonably necessary to subordinate this Agreement and all rights therein to the lien of any such mortgage or mortgages and each renewal, modification or extension, together with an appropriate estoppel; provided that Lessor shall

be responsible for insuring that any such document does not, in fact, materially interfere with City's use of, occupancy of or enjoyment of the Leased Premises as provided for in this Agreement. City may condition its subordination or attornment or both to the execution, acknowledgment and delivery to it by any such lienholder of a non-disturbance agreement in a form reasonably satisfactory to City's attorney.

ARTICLE X INDEMNIFICATION

A. By City

City will to the fullest extent permitted by law but subject to the limitations contained in Minnesota Statutes Chapter 466, protect, indemnify and save Lessor and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Leased Premises, or growing out of or in connection with the use or non-use, condition or occupancy of the Leased Premises or any part thereof. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the City, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by City of any provision of this Agreement.
3. Any violation of any law, ordinance, court order or regulation affecting the Leased Premises or the occupancy or use thereof.

B. By Lessor

Lessor will to the fullest extent permitted by law, protect, indemnify and save City and its officers, agents, servants, employees and any person who controls City within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims demands and judgements of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Building or growing out of or in connection with the use or non-

use, condition or occupancy of the Building or any part thereof and also, without limitation, any and all acts or operations related to the construction or installation of the Building. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for the Lessor, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.

2. Any violation by Lessor of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Building which shall have existed at the commencement of the Term of this Agreement or shall have been approved by the Lessor.
4. Any violation of any law, ordinance, court order or regulation affecting the Building or the ownership, occupancy or use thereof.

C. Indemnification Procedures

Promptly after receipt by either party of notice of the commencement of any action with respect to which the other party is required to indemnify the said party under this Article, the indemnitee shall notify the indemnitor in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, the indemnitor shall assume the defense of such action, including the employment of counsel satisfactory to the indemnitee and the payment of expenses. In so far as such action shall relate to any alleged liability of the City with respect to which indemnity may be sought against the Lessor, City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of the Lessor.

ARTICLE XI

INSURANCE

Lessor shall procure and continuously maintain insurance covering all risks of injury to or death of persons or damage to Building and Property arising in any way out of or as a result of Lessor's occupancy of or use of the Building or Property, carried in the names of the Lessor, any Subtenant and the City as their respective interests may appear, as follows:

A. Insurance During Construction

Lessor, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure

and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Lessor shall provide "All Risk" builders' risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and 00/100ths (\$50,000.00) Dollars per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Property and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Lessor, City, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Lessor shall waive all rights against City for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars aggregate per occurrence for personal injury, bodily injury and death, and limits of One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars for property damage liability. If per person limits are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. Contractor shall also require such liability coverage of its subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors' public liability--premises and operations;
- b. Independent contractors' protective contingent liability;

- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions; and
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement. In addition, employers liability coverage shall be maintained in limits of One Hundred Thousand and 00/100ths (\$100,000.00) Dollars per employee.

B. Permanent Insurance

1. Property Insurance

During the entire Term of the Agreement, the Building and Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Lessor hereby waives any and all claims or causes of action against City for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, the Lessor will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

The Lessor shall procure and maintain continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars aggregate per occurrence for personal bodily injury and death, and limits of One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars for property damage liability. If person limits

are specified, they shall be for not less than One Million Five Hundred Thousand and 00/100ths (\$1,500,000.00) Dollars per person and be for the same coverages. The City shall be named as an additional insured therein. Insurance shall cover:

- a. Public liability, including premises and operations coverage.
- b. Independent contractors--protective contingent liability.
- c. Personal injury.
- d. Owned, non-owned and hired vehicles.
- e. Contractual liability covering the indemnity obligations set forth herein.
- f. Dram Shop Insurance, if applicable.
- g. Property of Others.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement. Employees liability insurance shall be carried in limits of One Hundred Thousand and No/100 (\$100,000.00) Dollars per employee.

C. Requirements for All Insurance

All insurance required in this Article IX shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

D. Policies

The Lessor shall be required to supply to the City written copies of all policies required under this Agreement. In addition each insurer providing such policies shall be required to provide evidence satisfactory to the CAO that such policies will require the insurer to give the City thirty (30) days' written notice prior to cancellation or modification of said insurance. In the event that an "accord" form of certification is used, the words, "endeavor to" shall be stricken from the notification provisions thereof.

E. Uninsured Loss

In the event the Building or the Property or any portion thereof is destroyed by fire or other casualty covered by insurance, the Lessor shall forthwith repair, reconstruct, and restore the Property and the Building to substantially the same scale and condition, quality, and value as existed prior to the event

causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, the Lessor shall apply the proceeds of any insurance received by the Lessor to the payment or reimbursement of the costs thereof. The Lessor shall, however, complete the repair, reconstruction and restoration of the Property and the Building whether or not the proceeds of any insurance received by the Lessor are sufficient to pay for such repair, restoration, and reconstruction.

ARTICLE XII

DEFAULTS AND REMEDIES THEREFORE

A. Lessor Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by Lessor under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. Lessor shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of Lessor pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to Lessor of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- b. Lessor shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Building with the exception of assignments approved pursuant to the terms of this Agreement.
- c. Lessor makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency as made as to Lessor or its business; or Lessor files a petition of bankruptcy

or files a petition seeking any reorganization, dissolution, liquidation, or rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency statute, law or regulation; or Lessor files an answer admitting to or not contesting to the material allegations of a petition filed against in such proceeding or fails to have dismissed or vacated within thirty (30) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Lessor's properties or fails to have dismissed or vacated within thirty (30) days after the appointment without the consent or acquiescence of Lessor of any trustee, receiver or liquidator of any material part of Lessor's properties.

2. General Remedies

Except as otherwise set forth in this Agreement, City shall have the following remedies in the event of a default by Lessor:

- a. Terminate this Agreement, subject to rights conferred on Lessor by applicable State Statute.
- b. Seek and be entitled to monetary damages, including consequential damages from Lessor for any damages, including consequential damages incurred by City as a result of Lessor's default.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent Lessor's violation of the terms and conditions of this Agreement or to compel Lessor's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to City.

3. Special Event of Default and Remedy

In the event that City shall have requested Lessor to perform Cleaning Services with regard to the Leased Premises and Lessor shall have failed to do so or shall have failed to do so in accordance with the terms and conditions of this Agreement, City may give Notice to Lessor of such event of Default as

provided for in Article XX. below and, if Lessor shall have failed to correct such Default within Ten (10) days of the giving of such Notice City may treat said Default as a General Event of Default as provided for in Subparagraph 1 above and exercise the remedies provided for in Subparagraph 2 above or may, in the alternative and at the discretion of the Director, terminate only those portions of the Agreement pertaining to the provision of Cleaning Services to the Leased Premises.

B. City Defaults and Remedies

1. General Events of Default

The following shall be deemed to be general events of default by City under the terms and conditions of this Agreement to which the remedies set forth in Subparagraph 2 below shall be applicable as otherwise set forth in this Agreement.

- a. City shall fail to pay any Rent or other payment due to Lessor under Article III above within ten (10) days of the date said payment is due.
- b. City shall fail to observe or perform any of the other terms, conditions, covenants or agreements required to be observed or performed by it or any successors or assigns of City pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after Lessor has, pursuant to the provisions of this Agreement, given written notice to City of such default or, in the event that such default shall be incapable of cure during said thirty (30) day period, shall have failed to commence to cure said default within thirty (30) days of the date of said notice and to diligently pursue the same to completion.
- c. City shall permit valid liens, not cured or contested within thirty (30) days, to be placed on the Leased Premises with the exception of assignments approved pursuant to the terms of this Agreement.

2. General Remedies

Except as otherwise set forth in this Agreement, Lessor shall have the following remedies in the event of a default by City:

- a. Terminate this Agreement and, at its discretion, retake the Leased Premises from City, subject to rights conferred on City by applicable State Statute.
 - b. Seek and be entitled to monetary damages, including consequential damages from City for any damages incurred by Lessor as a result of City's default.
 - c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder.
 - d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to Lessor.
- C. Non-Waiver
The waiver by the non-defaulting party of any default on the part of defaulting party or the failure of non-defaulting party to declare default on the part of defaulting party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of defaulting party of the same or of any other obligation of defaulting party hereunder. And, to be effective, any waiver of any default by a defaulting party hereunder shall be in writing by non-defaulting party.
- D. Remedies Cumulative
Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.
- E. Attorneys' Fees
In the event that either party is in default of any of the terms and conditions of this Agreement and the non-defaulting party shall successfully take legal action to enforce said rights herein, in addition to the foregoing, such non-defaulting party shall be entitled to reimbursement for its reasonable attorney's fees and costs and otherwise for its costs and disbursements occasioned in enforcing its rights hereunder.

ARTICLE XIII FORCE MAJEURE

Under the terms of this Agreement, neither the City nor Lessor shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations under this Agreement in the event of enforced delay in the performance of its obligations due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XIV EMINENT DOMAIN

In the event that the Leased Premises or any portion thereof shall be taken by eminent domain, or that the value of City's leasehold interest is measurably diminished at a result of such an exercise of the exercise of eminent domain, at any time during the Term of this Agreement, City shall be entitled to damages equal to the damages suffered by it as a tenant under Minnesota Statutes for the remaining Term of this Agreement.

ARTICLE XV DESTRUCTION OF PREMISES

In the event of partial or total damage or destruction of the Leased Premises during the Term of this Agreement, the following shall apply:

A. Continued Occupancy

In the event that the Leased Premises are partially damaged or destroyed but City determines that it is practical to continue to occupy and use the Leased Premises for carrying on the work of the Workforce Center, Lessor shall proceed to repair or reconstruct the Leased Premises to substantially the condition they were in prior to the damage thereto and City may continue to occupy and use the Leased Premises, provided that it shall be entitled to a reduction of Rent payable to Lessor representing any reduction in the Leased Premises available to City for its use and for the reduction in utility of those portions of the Leased Premises occupied and used by City. Lessor shall cause such repairs and reconstruction to be completed as expeditiously as possible; in this regard the parties agree to cooperate to coordinate such repair and reconstruction work with City's operation of its Workforce Center operations.

B. Occupancy Interrupted

To the extent that City shall determine that the extent of damage or destruction of the Leased Premises is such that it is not practical for City to continue to operate the Workforce Center therefrom, City may cease operations of its Workforce Center on the Leased Premises and shall not be obligated to pay Rent to Lessor during such period when it is not occupying the Leased Premises. Lessor shall have the option of repairing the Leased Premises or of terminating this Agreement. If Lessor chooses not to repair or reconstruction the Leased Premises or fails to restore the Leased Premises to substantially the condition they were in prior to the event causing the damage or destruction thereto within Ninety (90) days of said incident, City shall have the option of terminating its lease of the Leased Premises hereunder.

ARTICLE XVI

SIGNAGE

City shall have the rights to affix professionally fabricated signs to the exterior of the Building adjacent to every public access to the Building advertizing the City and the names of any Subtenants of City for the purpose of identifying the services provided by City and its Subtenants to the public. Such signs shall be deemed to the property of City and its Subtenants.

ARTICLE XVII

REPRESENTATIONS BY City

City represents and warrants that as of the date hereof:

- A. It is a lawfully constituted authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are no actions, suits or proceedings pending, or to the knowledge of City, threatened against City or any property of City in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to City, would have a material adverse effect upon City or any business or property of City and City is not in default with respect to any order of any court or government agency.
- C. City has investigated and has no knowledge that a City board member or other member, official, or employee of City is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection

with this Agreement.

- D. City shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

ARTICLE XVIII

LESSOR'S REPRESENTATIONS AND WARRANTIES

Lessor represents and warrants that as of the date hereof:

- A. It is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. It is fully competent to lease the Leased Premises and to construct, equip and operate the Building thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. The Property and the Building are in compliance with all applicable federal, state and local laws, rules and regulations including without limitation those relating to hazardous materials and all other environmental laws and the Americans with Disabilities Act and that all boilers and other pressure vessel equipment is and shall be maintained by Lessor in compliance ASME standards and codes.
- D. There are no actions, suits or proceedings pending or, to the knowledge of Lessor, threatened against Lessor or any property of Lessor in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Lessor, could have a material adverse effect upon Lessor or the Property and Building, and that Lessor is not in default of any order of any court or governmental agency.
- E. It is not in default of the payment of principal or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- F. Lessor has investigated and has no knowledge that any officer, director, agent

or employee of Lessor is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.

- G. Lessor shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects. If necessary, Lessor agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.

ARTICLE XIX

RUNS WITH THE LAND

This Agreement shall be deemed to run with the land and shall enure to the benefit of the parties hereto and to their successors and assigns.

ARTICLE XX

NOTICES

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:

City of Duluth

Room 402 City Hall

411 West First Street

Duluth, MN 55802

Attn: Director of Business & Community
Development

In the case of Lessor:

A & L Partnership, LLP

11 East Superior Street, #500

Duluth, MN 55802

Copy to:

William M. Burns, Esquire

Hanft Fride, a Professional Association

1000 U.S. Bank Place

130 West Superior Street
Duluth, MN 55802

ARTICLE XXI
APPLICABLE LAW

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first shown above.

CITY OF DULUTH, a Minnesota
Municipal Corporation

A & L PARTNERSHIP, LLP ,a Minnesota
Limited Liability Partnership

By _____
Its Mayor

Joseph R. Link, Partner

Attest:

By _____
Its City Clerk

Approved:

Countersigned:

Assistant City Attorney

City Auditor

STATE OF MINNESOTA)
) ss.

COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this ____th day of _____,

2011 by Joseph R. Link, Partner of A. & L Partnership LLP, a Minnesota Limited Liability Partnership.

Notary Public

[illegible]

The foregoing instrument was acknowledged before me this ____th day of _____, 2011, by Don Ness and Jeffrey J. Cox, the Mayor and City Clerk of the City of Duluth, a municipal corporation, on behalf of the City.

Notary Public

This Lease Drafted by:
Robert E. Asleson
Room 410 City Hall
Duluth, MN 55802
(218) 730-5490